

ASSEMBLY, No. 2860

STATE OF NEW JERSEY

INTRODUCED MAY 1, 1997

By Assemblymen LeFEVRE and BLEE

1 AN ACT concerning the release of certain account information by a
2 financial institution under certain circumstances and supplementing
3 Title 17 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. The Legislature finds and declares that many customers of
9 financial institutions have worked diligently to accumulate savings and
10 other resources deposited in, or managed by, financial institutions.
11 Some of these customers are vulnerable to fraudulent or other illegal
12 schemes because of advanced years or because of physical or mental
13 illness, disability or deficiency, or because they lack sufficient
14 understanding of and do not have the capacity to make, communicate
15 or carry out decisions concerning the management of their savings or
16 resources. Financial institutions, in the course of conducting business
17 with these vulnerable customers and senior customers, suspect, from
18 time to time, that these customers are targets of illegal schemes but
19 choose not to act because they are unclear about the conditions under
20 which they may release account information, how much information
21 may be released, and the entities to whom they may release such
22 information. Therefore, the Legislature finds that it is appropriate to
23 provide statutory guidance to financial institutions in this situation.

24
25 2. As used in this act:

26 "Account" means a deposit or fiduciary account maintained with a
27 financial institution in the senior or vulnerable customer's name.

28 "Community setting" means a private residence or any
29 noninstitutional setting in which a person may reside alone or with
30 others, but shall not include residential health care facilities, rooming
31 houses or boarding homes or any other facility or living arrangement
32 subject to licensure by, operated by, or under contract with, a State
33 department or agency.

34 "County adult protective services provider" means a county Board
35 of Social Services or other public or nonprofit agency with experience
36 as a New Jersey provider of protective services for adults, designated
37 by the county and approved by the Commissioner of Human Services

1 pursuant to the "Adult Protective Services Act," P.L.1993, c.249
2 (C.52:27D-406 et seq.).

3 "Financial institution" means a state or federally chartered bank,
4 savings bank, savings and loan association or credit union.

5 "Financial record" means an original of, a copy of, or information
6 known to have been derived from, any record held by a financial
7 institution pertaining to a senior or vulnerable customer's account or
8 relationship with the financial institution.

9 "Law enforcement agency" means a law enforcement agency of the
10 State or of a local government unit.

11 "Senior customer" means a natural person, who, to the financial
12 institution acting in good faith, appears to be at least 60 years of age,
13 who utilized or is utilizing any service of a financial institution, or for
14 whom a financial institution is acting or has acted as a fiduciary, in
15 relation to an account maintained in the person's name.

16 "Vulnerable customer" means a natural person, who is at least 18
17 years of age, resides in a community setting, and, to a financial
18 institution acting in good faith, appears to have a physical or mental
19 illness, disability or deficiency, or lacks a sufficient understanding of,
20 and the capacity to make, communicate or carry out decisions
21 concerning, the management of the customer's savings or resources,
22 who utilized or is utilizing any service of a financial institution, or for
23 whom a financial institution is acting or has acted as a fiduciary, in
24 relation to an account maintained in the person's name.

25

26 3. Notwithstanding any other law, regulation or common law to the
27 contrary, a financial institution may release the financial records
28 regarding a customer's account to a law enforcement agency, a county
29 adult protective services provider, or both if:

30 a. A vulnerable customer or a senior customer has a beneficial
31 interest in the account either wholly or in part; and

32 b. The financial institution suspects that illegal activity is, or will
33 be, taking place which involves the account including, but not limited
34 to, defrauding any vulnerable or senior customer who has a beneficial
35 interest in the account.

36

37 4. a. Any financial institution, or officer, employee, or agent
38 thereof, making a disclosure of information pursuant to this act, shall
39 not be liable to the customer under any law or regulation or common
40 law of this State for that disclosure or for any failure to notify the
41 customer of that disclosure.

42 b. A financial institution, or officer, employee, or agent thereof,
43 which decides in good faith not to disclose information which it is
44 permitted to disclose under this act regarding the account or
45 relationship of a senior or vulnerable customer shall not be liable under
46 any law or regulation or common law of this State for that decision.

1 5. This act shall take effect immediately.

2

3

STATEMENT

4

5 The senior citizens and vulnerable adults of this State are sometimes
6 targets of illegal schemes involving their accounts in New Jersey
7 financial institutions. In some of these cases, the financial institutions
8 have knowledge of, or a suspicion of, illegal activity involving the
9 accounts but are reluctant to inform authorities because they may be
10 subject to a civil suit alleging that the customer's common law right of
11 privacy was violated.

12 This bill provides that financial institutions may release certain
13 customer account information relevant to actual or suspected illegal
14 activities to a law enforcement agency or a county adult protective
15 service provider, or both.

16 If a financial institution makes the release of information in
17 accordance with the provisions of this bill, it would be immune from
18 liability under any law or regulation or common law of this State in a
19 suit alleging that the customer's right of financial privacy had been
20 violated. In addition, if a financial institution, officer, employee or
21 agent thereof, decides in good faith not to disclose information it is
22 permitted to disclose under this bill, it would not be liable under any
23 law or regulation or common law for that decision. This bill would
24 give financial institutions legal comfort in contacting law enforcement
25 agencies or county adult protective service providers in those cases
26 where they suspect that illegal activity has occurred or may occur
27 involving an account in which a senior or vulnerable customer has a
28 beneficial interest.

29 The federal "Right to Financial Privacy Act of 1978," 12 U.S.C.
30 §3401 et seq., provides, among other things, that a financial institution
31 may release account information to federal governmental agents if the
32 information may be relevant to a possible violation of any statute or
33 regulation. However, the federal law does not address releases of
34 information to state, county or municipal law enforcement agencies or
35 to county adult protective service providers. This bill would
36 complement and parallel the federal act by providing that financial
37 institutions may release relevant information to State and local law
38 enforcement agencies as well as to county adult protective service
39 providers if a financial institution suspects illegal activity related to a
40 senior or vulnerable customer's account.

41

42

43

44 Permits release of certain account information by a financial institution
45 under certain circumstance.